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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-eighth session

SUMMARY RECORD OF THE 1440th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 7 March 2001, at 10 a.m.

Chairman: Mr. SHERIFIS

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Fifteenth periodic report of Argentina (continued) (CERD/C/338/Add.9)

1. At the invitation of the Chairman, the members of the delegation of Argentina took places at the Committee table.

2. Mr. ZAFFARONI (Argentina), replying to questions put by Committee members at the preceding meeting, said that article 25 of the Argentine Federal Constitution, which provided that the Federal Government must encourage European immigration, was not implemented in practice. The only provision of that article which was applied was the one that prohibited restricting or limiting entry into Argentine territory by those wishing to settle there. The procedure for amending the Argentine Constitution was relatively rigid, for it could be undertaken only by a constituent assembly convened by a two-thirds majority of both Chambers of the Federal Congress. That was why the provision was still part of the Constitution.

3. Regarding the activities of neo-Nazi groups, he said that there were only two small groups; they operated, essentially, in the Buenos Aires region and consisted mainly of young people who engaged in acts of vandalism and who were not very indoctrinated. The Government had decided, with the approval of the Simon Wiesenthal Centre, not to react to the provocations of those two small groups so as not to play their game. They were not - nor could they become - political parties, for they had only about 100 members each, at most; to form a political party, it was necessary to have 2,000 members. One of the groups had claimed to have 1,500 members, but it had turned out that the figures were based on forged signatures. Moreover, the head of one group had been found guilty of engaging in racist propaganda, under article 4 of the Convention. Finally, although it was true that the groups had, at times, been used by corrupt police officers, particularly in Buenos Aires, they were more of a security problem for minorities than a political problem for the authorities.

4. As to the difficulty of obtaining a residence permit in Argentina, he said that a new immigration bill was currently before the Population Commission of the Chamber of Deputies. The previous Government had concluded an agreement on the subject with an Argentine company and the present Government could not cancel it, for financial reasons. Under the terms of that agreement, the company was supposed to shoulder part of the costs incurred by immigrants to obtain a residence permit. That agreement obviously posed the issue of the difficulties encountered by State bodies responsible for immigration matters. However, it should be pointed out that Argentina was experiencing economic difficulties and was not very high up on the list of countries people wanted to emigrate to and that it had essentially become a receiving country for immigrants from the regions, particularly from neighbouring countries. The annual flow of immigrants was estimated at some 40,000 or 50,000 people. Over the years, the number of illegal immigrants subject to various forms of exploitation, both economic and sexual, had been increasing. Several decisions had been taken to regularize their situation, but the present Government hoped to be able to adopt a more rational immigration law, which would

facilitate the controlled entry of immigrants. The National Institute to Combat Discrimination, Xenophobia and Racism (INADI) and various religious groups and non-governmental organizations had agreed with the Government to establish an immigration advisory service and a bureau was about to open to advise immigrants and ensure that they did not pay excessively high prices to intermediary companies in order to settle in the country. Furthermore, all primary and secondary education establishments were required by law to accept any immigrant under 18 years of age, even if he or she did not have an Argentine identity document.

5. Regarding the Immigration Department's powers to expel and detain, he said that no Argentine administrative authority had the power to place anyone in detention without judicial review. Habeas corpus applied, including in the event of a public emergency. It was true that there had, in the past, been a residence law which authorized the executive to order people expelled without judicial review, but it had been repealed more than half a century earlier.

6. Referring to the case of a Mozambican national on his way to La Paz, Bolivia, who had been intercepted at the airport in Buenos Aires because he did not have an entry visa for Argentina, detained and then expelled a few hours after his arrival, he said that the case had been reported by INADI and the Public Prosecutor's Office had immediately opened an investigation which had led to a trial and the officials responsible for that violation had been summoned to appear. There had also been another case in which the immigration services had been compelled to suspend the expulsion of 3,000 illegal immigrants on the orders of the Prosecutor. Irregularities and arbitrary actions taken by immigration personnel were therefore strictly punished.

7. As for the 1992 terrorist acts against the Israeli Embassy, he said that that case had been considered by the Supreme Court, which, under the Constitution, had jurisdiction over actions aimed at foreigners. In that instance, the Supreme Court, had found itself for the first time confronted with a case in which it was, de facto, called on to play the double role of investigator and judge. It was true that the Court should simply have referred the case to a Federal judge, for the investigation had produced little result.

8. With regard to the attack on the headquarters of the Argentine Israelite Mutual Association (AMIA), on 18 July 1994, he conceded that proceedings in that matter had been very slow, since no decision had yet been handed down, even though six years had passed. However, the case was extremely complex and police officials were involved. Several cover-ups had been brought to light and 15 people were currently awaiting trial in connection with that case. The investigation into the murders was closed; although it had confirmed the involvement of members of the police security forces, it had not been possible to determine who had been behind the attack.

9. Regarding the situation of persons of African origin, he said that, since Argentina had not, in the previous century, engaged in intensive cotton, sugar cane or cocoa growing, there had been very few slaves there. The slave population had been freed in 1803 and had gradually intermarried with the population and had become almost "invisible". In 1920, there had been a wave of black immigrants, mainly from Cape Verde. Argentina had experienced very few cases of racism against that population and, in that area, did not have problems comparable to those of the neighbouring countries.

10. Replying to a question put by Mr. Pillai concerning the situation of other ethnic groups in Argentina, he said that there had been problems of racism, but that they had corresponded to certain geographical configurations which had disappeared with the arrival of new generations. Of course, like most Latin American countries, it had experienced, at the start of the twentieth century, the hegemony of positivist ideological doctrines which had supported racism against the Indians and favoured a typically European immigration. The grandchildren of the first twentieth-century immigrants were, indeed, perhaps guilty of a vague kind of racism against persons of mixed race who had gradually moved to the cities and against immigrants from neighbouring countries such as Bolivia, Paraguay and Uruguay; however, school had played and continued to play an important role in the homogenization of society. There was no clear manifestation of racism in Argentina in the sense of State-sponsored racism. Currently, the biggest manifestation in terms of racism concerned a private radio station in Buenos Aries which had a programme called La Primera. That station did engage in speech that bordered on racist propaganda, but it was not, in the Government's view, deliberate ideological propaganda, but rather the action of a small enterprise which was exploiting an ultra-reactionary segment of society.

11. As to whether racist organizations were prohibited by law, he said that Argentine legislation was in line with the Convention in that regard: the establishment of or participation in such organizations was punishable by one month to three years' imprisonment. Furthermore, if such an organization was found guilty of acts of violence, then it was subject to the Penal Code, which provided for prison sentences of 3 to 10 years. Soon there would be no loopholes left in the law, for a commission had been set up within the Ministry of Justice and was working actively to bring existing criminal legislation into line with international conventions. It was in close contact with INADI and would consult the latter prior to submitting its report.

12. Regarding questions about judicial practice, he said that, due to lack of resources and qualified personnel, the data had not been computerized and, for that reason, his delegation could provide only an incomplete general picture. The principal judgements concerning cases in which INADI had intervened had resulted in the payment of compensation to persons who had been discriminated against because they were HIV positive, the granting of permission to use foreign and indigenous names, the restoration of the rights of homosexuals and transexuals and the abolition of the requirement that persons wishing to enter the police force in the provinces must be Argentinian by birth. INADI used several legal means, including habeas corpus and amparo, and made its lawyers available to persons wishing to institute legal proceedings. The lack of a network of lawyers in Argentina was dealt with by agreements with the Argentine Bar Association and the Federation of Law Schools. That was why there was no longer a hotline: the country was entirely covered thanks to those agreements.

13. The Committee had referred to the overturning of the conviction of the skinheads who had attacked and injured a young man whom they had believed to be Jewish. The decision of the Court of Cassation, which he, personally, believed to be unacceptable, had prompted a strong reaction in public opinion and had been the subject of a complaint by Jewish associations. The overturning of that conviction had yet to be confirmed because the Supreme Court had not yet come to a decision on the matter. The Council of the Judiciary, the body responsible for appointing and removing judges, was currently investigating a complaint against three judges of the Chamber which had overturned the conviction.

14. Mr. VILLALPANDO (Argentina) said he was using information from the document without a symbol entitled "Politics against Discrimination", which had been distributed in the meeting room in English only, to reply to the question on the activities of INADI. The first part of that document described INADI's establishment and mandate. Minorities were represented on the two main organs of INADI, the Board of Directors, which included representatives of the State, as well as representatives of three non-governmental organizations well known for their commitment to the fight against racism, and the Advisory Council, made up of representatives from 10 associations active in defending minority rights.

15. In 2000, INADI had concluded a technical and research assistance agreement with Lomas de Zamora National University and agreements with associations active in promoting and raising awareness of anti-discriminatory practices, as well as agreements with the Confederation of Teachers on continuing education in areas related to discrimination; with the Ministry of the Interior and the Ministry of Justice and Human Rights on the training of police, gendarmerie, prefecture, prison and border police personnel; with the Chamber of Deputies of Buenos Aires Province on cooperation and mutual assistance; and with the city of Buenos Aires Bar Association on cooperation in the defence of fundamental rights. An anti-discrimination campaign using radio and television advertisements had also been launched in 2000 and would be renewed in March 2001. INADI also intended to put up posters in educational establishments, health centres, administrative offices and railway stations. In 2000, a number of seminars and awareness activities had been organized for the civil service and, in addition, in cooperation with specialized non-governmental organizations, INADI had created an immigration bureau which provided immigrants without papers free assistance in obtaining a residence permit, so that they would not have to turn to middle-men who often took advantage of them.

16. In the area of research, an agreement had been concluded with the Tres de Febrero National University on the publication of a series of studies on the main causes of discrimination. Fifteen fellowships had been awarded to students from other universities for internships at INADI, which had also created a Complaints Centre for processing complaints made by individuals who believed that they had been the victims of discrimination. Since its creation, the Centre had processed 3,500 files, which had been evaluated and selected using criteria flexible enough to allow for the elimination of complaints which were clearly unfounded. INADI attempted to settle those complaints by working with the administration when the accused party was the State and, in other cases, used mediation. It also provided advice with regard to any criminal proceedings.

17. In reply to a question concerning the situation of refugees, he said that Argentina had ratified the Convention relating to the Status of Refugees in 1965. Its so-called geographic reservation, according to which it would accept only refugees from Europe, had been withdrawn in 1983 upon the return to democratic government; consequently, the international conventions relating to refugees were fully recognized by Argentina. In March 1985, the Refugee Eligibility Committee had been created by decree to review requests for refugee status. Its mandate was to undertake studies on the refugee issue with a view to defining appropriate strategies and taking decisions on the granting of refugee status. It was made up of civil servants from the Immigration Office and a representative of the Ministry of Foreign Affairs; a representative of the Office of the United Nations High Commissioner for Refugees (UNHCR) was allowed to

attend meetings and participate in discussions. UNHCR could also appeal any decision to deny refugee status. In that context, he indicated that there had been 2,396 refugees in Argentina at the end of 2000, with 1,274 requests for asylum still under review. Two draft reform measures had been introduced in parliament in order to accelerate the excessively long refugee status regularization procedure. Each reform provided for the participation of UNHCR, which remained in close contact with INADI. The former's main objective was to harmonize national procedures with those of other countries in the Southern Cone in order to ensure identical levels of protection throughout the region, an objective which his Government shared.

18. Lastly, referring to discrimination against Bolivians in particular, he said that, owing to the lack of time, he would refer the Committee to the document without a symbol which had been distributed in the meeting room in Spanish only and which had been submitted to the Stockholm International Forum: Combating Intolerance, held in January 2001. He would however be happy to provide any further information the Committee might request.

19. Ms. GONZALEZ (Argentina), replying to the many questions on the situation of indigenous populations and referring to the need to implement preferential measures on their behalf, said that her Government recognized that, to a great extent, the basic needs of indigenous peoples were not being met and that they were socio-economically disadvantaged. Accordingly, constitutional reforms, recent legislation on the rights of indigenous peoples and numerous public programmes had been aimed at remedying that situation, in particular by creating mechanisms for preferential support. The very existence of the National Institute of Indigenous Affairs (INAI) was proof of that commitment. Since the report had been prepared, a national plan for indigenous peoples had been drawn up and would soon be officially promulgated through a Presidential decree.

20. Turning to paragraph 28 of the report, she explained that, at the time the report had been drafted, the National Institute of Indigenous Affairs had not yet been created. In the interval, a Presidential decree adopted in August 2000 had established the Institute's management and operational system, which was quite decentralized. That new structure had yet to be formally approved by the President of the Republic and the Ministry of the Economy, but the Institute nevertheless already had its own staff and a budget which was currently approximately $4 million. The Institute worked closely with the Ministries of Social Development and Education, provincial institutes for indigenous affairs, indigenous associations and others. In addition to its own funds, it received funding from international bodies such as the Inter-American Development Bank (IADB), the European Union and the World Bank for financing assistance projects for specific communities or regions.

21. With regard to the recognition of the ethnic and cultural pre-existence of Argentina's indigenous peoples, she said that, in addition to recognition in the Constitution, there were various measures and programmes which provided for consultation with and the participation of indigenous peoples in areas which concerned them. Currently, one of the main objectives of the National Institute of Indigenous Affairs was to ensure that the coordinating council, on which all indigenous peoples from all regions would be represented and which had been created by Act No. 23302 on indigenous peoples, would begin operations. Approximately 90 per cent of the Institute's sustainable development projects were drawn up at the request of and with the participation of the indigenous communities themselves. Most programmes for the

regularization of property titles for lands inhabited by indigenous communities were also undertaken in consultation with indigenous associations. For example, in the Río Negro project, the entire technical team and the project coordinator were from the Mapuche tribe, one of the indigenous peoples most concerned by the project. Although the situation was not ideal and there were cases of major projects where the indigenous populations had not been, or not been sufficiently, consulted, as, for example, during the construction of the Nor Andino gas pipeline, the affected communities had since received compensation. It was, however, clear that the authorities must, to the greatest extent possible, seek the involvement of the indigenous peoples in question before entering into major infrastructure projects which would affect the environment.

22. Her Government clearly required reliable socio-economic information and statistics and the National Institute of Indigenous Affairs had already collected some useful information as a result of the enrolment of members of indigenous communities in the National Register of Indigenous Communities. Further information was also obtained from facts and statistics gathered in areas inhabited by indigenous populations. As a result, it had been learned that the infant mortality rate was much higher than the national average in regions inhabited principally by indigenous populations. Although there had been no census in 2000 due to budgetary problems, a census planned for the near future would provide a great deal of information, especially given that it would also include questions on self-identification with and belonging to indigenous communities.

23. In reply to questions on how Argentine institutions reconciled the indigenous community property system with individual property ownership, she said that the Constitution recognized the community possession and ownership of lands historically occupied by Argentina's indigenous peoples and stipulated that those lands were inalienable and could not be seized or transferred. Those provisions had been necessary because, in the past, indigenous lands had often been wrongly seized or bought cheaply. The public authorities were currently using purchase or expropriation procedures to ensure that lands historically occupied by indigenous peoples were returned to them and protected from real estate market speculation. Those constitutional provisions did not, however, prevent each of Argentina's 17 indigenous peoples from observing as they saw fit traditional methods for the exchange of land within a family or a community and the law did not exclude recognition of individually held indigenous land, as was the case, for example, in the province of Chubut, where Mapuche families were scattered throughout the province, but their land was nevertheless considered to be indigenous land and subject to the same regime as land belonging to that community. The National Institute of Indigenous Affairs was also developing programmes for the regularization of property titles for land inhabited by indigenous communities. Through various mechanisms and in liaison with provincial and municipal Governments, it was monitoring in particular the regularization of property titles for all public lands on which indigenous communities were living. The relative speed with which public lands were transferred to the indigenous peoples was affected by the political orientation of the provinces and municipalities.

24. The economic activity undertaken on indigenous lands varied from region to region and in accordance with the lifestyles of the indigenous populations and communities which traditionally revolved around raising livestock, agriculture or hunting. When lands were bought back or transferred, studies were undertaken to ensure that they would be used for sustainable

development and would be adequate for that purpose. However, a significant number of indigenous peoples no longer lived on their original lands and therefore no longer had any relationship with the land. Such considerations were all taken into account by the authorities, in consultation with indigenous organizations, when adopting any decisions. In that context, she noted that, with regard to the so-called "Pulmari" dispute, which was very complex and about which experts from the International Labour Organization (ILO) had expressed concerns, she said that the conflict had been settled thanks to the joint efforts of the National Institute of Indigenous Affairs and the indigenous communities involved, and a decision for expropriation had been taken.

25. In reply to the question on the criteria according to which indigenous communities were authorized to enrol in the National Register of Indigenous Communities, which allowed them to take advantage of preferential measures, she said that they simply had to submit a brief historical summary of their situation and their system of organization. No written document was required and they did not have to speak any particular indigenous language.

26. Turning to the right to bilingual and intercultural education, she said that efforts were under way to develop bilingual teaching, in particular at the primary level, and the National Institute of Indigenous Affairs was trying to have the school curriculum modified for that purpose, but that was a lengthy and complex task. Nevertheless, plans already existed to provide study grants to indigenous students. Lastly, she noted that certain indigenous cultural objects which had been in the keeping of national museums had been returned to their communities of origin in recognition of the right of indigenous communities to manage their own cultural heritage.

27. The CHAIRMAN invited the members of the Committee to make further observations following the replies provided by the delegation of the State party to their supplementary questions.

28. Mr. THORNBERRY recalled that the delegation had referred to the problems involved in repealing the provisions of article 25 of the Constitution relating to European immigration owing to the rigid abrogation procedure, but wondered whether it might nevertheless be considered that the other provisions of the Constitution and the decisions of the courts in fact cancelled out the effects of those provisions.

29. With regard to the high cost to immigrants of the formalities necessary to regularize their situation, he referred to a decision of the European Court of Human Rights in a case between an individual and the Republic of Ireland in which the Court had stated that insufficient support from the State for the realization of human rights could be an obstacle to the full enjoyment of those rights. He also wished to know whether the issue of the recognition of indigenous place names had given rise to a debate within Argentine society and inquired about the concrete effects of recognizing the pre-existence of the indigenous peoples.

30. Mr. de GOUTTES, noting that, in its replies, the delegation had indicated that the Argentine Government was deeply concerned about the fact that a very influential radio station in the country was spreading ideas of a racist nature, said that it would be useful to have more

precise information on the influence and audience of that information source. He also wondered what measures the Government was thinking of taking to reduce the negative influence of such media sources.

31. Mr. TANG Changuyang noted that the provisions of the international instruments ratified by States must be integrated into domestic legislation. Consequently, if that had not been done with some of the provisions of the Convention in Argentina's legislation, the State party must take measures to include them.

32. Mr. ABOUL-NASR said that it was never easy to reform a national constitution, but, considering the fact that some provisions of the Constitution had been amended, in particular within the framework of the 1994 reform, he was surprised that it was proving so difficult to amend article 25 of the Constitution, which gave preference to European immigration.

33. Mr. ZAFFARONI (Argentina) said that the provisions in question of article 25 of the Constitution were in practice obsolete and no longer applied. In fact, they had not been retained during the 1994 constitutional reform, not for ideological reasons, but because of a political decision, since the party in Government and the largest opposition party had agreed to make no amendments to the first 35 articles of the Constitution.

34. He added that his Government was aware of the problem posed by the high cost of regularization formalities for immigrants and was planning various measures to remedy that situation, in particular within the framework of the law on immigration which should be promulgated in the near future.

35. With regard to the hierarchy of the various legal texts in force in the country, he said that the Constitution and the international human rights conventions incorporated in the Constitution were the highest law of the land and therefore took precedence over all other legislation in force. After the Constitution came the other international conventions which had been ratified by Argentina and which took precedence over national laws. Then there were the federal or national laws, which could not be in contradiction with higher laws. However, he noted that the provisions of international instruments ratified by Argentina constituted domestic legal standards only on the condition that the required implementation texts had been promulgated, in particular in criminal matters. Lastly, he said that the criminal legislation in force since 1988 allowed for effective punishment of persons who committed offences defined in the Convention.

36. He explained that the radio station mentioned by several members of the Committee, which had a very large audience in the country because of its popular music programming, avoided breaking the law against openly advocating racial superiority by choosing instead to refer to a "silent invasion". It did not make openly racist statements, but, rather, provided tendentious or incorrect information about immigrants or foreigners, in particular falsely characterizing them as unfair competitors for Argentine workers and major causes of crime and lack of security. Given the country's past history of a long period of information control, his Government was trying to settle that problem without hampering the free exercise of the right to inform, be informed and to criticize, freedoms which were essential for democracy.

37. Ms. GONZALEZ (Argentina) said that the radio station in question was taking advantage of the difficulties involved in adopting specific measures to suppress the dissemination of ideas deemed to be in violation of the Convention, without damaging social coexistence.

38. With regard to the ethnic and cultural pre-existence of Argentina's indigenous peoples mentioned in the report (para. 37), she said that the 1994 constitutional reform had radically changed the concept of national State and the attitude towards the indigenous peoples, who until then had been discussed only in the context of issues involving borders, security, peaceful relations and religious conversion. Article 67 of the Constitution had radically changed that situation by recognizing the ethnic pre-existence of the indigenous peoples and the nation's cultural diversity, as well as the concepts of community property and the legal personality of indigenous communities, new concepts which had required major legislative reform. Consequently, in 2000, a commission to evaluate and review the reform of the Civil Code and the Commercial Code had recommended that indigenous peoples and experts on indigenous-related legislation should be involved in the legislative reform process under way. She stressed that the indigenous peoples were insisting that their ethnic and cultural pre-existence as the first inhabitants of the country before the conquest, colonization and the creation of the national State should be recognized. Recognition of the concept of original people likewise implied changes which affected legislation, institutions and the future character of Argentine society itself. In that context, IANI had recommended that an evaluation and follow-up commission made up of indigenous representatives, experts, researchers and jurists, should be created with a mandate to define a national and local legal framework for land-related matters.

39. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) expressed satisfaction that consideration of the report of Argentina had given rise to a particularly constructive, frank and exhaustive dialogue between the Committee and the Argentine delegation, which had highlighted the positive aspects of the implementation of the Convention in Argentina, as well as related difficulties.

40. Turning to positive aspects, he said the Committee wished to express its satisfaction with the fact that the Convention had equal status with the Constitution in Argentina's domestic legislation and that the provisions of article 25 of the Constitution were no longer applied. The Committee had received copious information from the delegation, particularly encouraging information with regard to the transfer of lands and the desire to obtain socio-economic data in order to better evaluate the current situation of the indigenous peoples.

41. He welcomed the fact that the Argentine Government had shown a desire to ensure that indigenous peoples participated fully in the political and community life of the country and suggested that the Committee should be provided with further information in that regard in future periodic reports.

42. As to article 4 of the Convention, he had taken note with satisfaction of the information provided on the scope of Act No. 23592 of 21 August 1988, which increased the penalties under the Penal Code for offences having an ethnic or racial motivation, as well as of the establishment within the Ministry of Justice of a commission to incorporate provisions which reflected

Argentina's commitments under international human rights instruments into criminal legislation. He hoped that the Argentine Government would keep the Committee informed of the results of that commission's work.

43. The Committee had taken note with interest of the information provided on the judicial inquiry conducted following the attacks against the Embassy of Israel in Argentina in 1992 and against the offices of the Argentine Israelite Mutual Association (AMIA) in Buenos Aires in 1994, of the explanation that the lack of information in the report on persons of African origin was due to historical reasons and of the information that, although racism existed in Argentina, there was no organized racist movement, it also recognized that the radio station programmes in question did not constitute openly racist propaganda and therefore did not violate the law. The adoption in the near future of a comprehensive immigration act would be a welcome step and should contribute to implementation of the Convention in Argentina.

44. The CHAIRMAN thanked Mr. Valencia Rodríguez for his useful and pertinent observations on the report of Argentina and expressed his sincere thanks to the Argentine delegation for the fruitful and constructive dialogue it had maintained with the Committee during the consideration of the fifteenth periodic report of Argentina.

The meeting rose at 12.45 p.m.